

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	Civil Action No.: 1:18-cv-04168
)	
Plaintiff,)	Judge Sharon Johnson Coleman
)	Magistrate Judge Young Kim
STEVEN L. MASSIE,)	
)	
Intervenor-Plaintiff,)	
v.)	
)	
IDEC CORPORATION,)	
)	
Defendant.)	

**MOTION FOR
SUBSTITUTION OF INTERVENOR-PLAINTIFFS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 25(a)**

Marla Massie, Executor and representative of the Estate of Steven L. Massie, by and through Intervenor-Plaintiff's attorney, Dianne M. Onichimowski, of DMO Law Firm, and pursuant to Federal Rule of Civil Procedure 25(a), moves this Court for an Order substituting the Estate of Steven L. Massie ("Estate of Massie") for Steven L. Massie ("Massie"), as Intervenor-Plaintiff in this case. In support of this Motion, Intervenor-Plaintiff states as follows:

1. On June 26, 2018, Massie intervened as a matter of right pursuant to 42 U.S.C. §2000e-5(f)(1) and Federal Rule of Civil Procedure 24 in this action, alleging violations of the Americans With Disabilities Act of 1990, 42 U.S.C.S. §12101, et. seq. and the Age Discrimination in Employment Act of 1967, 29 U.S.C.S. §621, et. seq. On August 17, 2018,

Defendant IDEC Corporation (“IDEC”) filed a Motion to Compel Arbitration and Stay Litigation.

2. By Order filed on March 14, 2019, this Court denied in part and granted in part the Motion to Compel Arbitration and Stay Litigation (“Order”). On March 27, 2019, IDEC filed a Notice of Appeal appealing the Order. The appeal in the United States Court of Appeals for the Seventh Circuit (“Seventh Circuit”) was designated *Equal Employment Opportunity Commission, Steven L. Massie v. IDEC Corporation*, Case No. 19-1556 (“Appeal”).

3. On April 30, 2019, Massie died.

4. On May 9, 2019, Massie filed an Uncontested Motion for Substitution of Intervenor-Plaintiffs Pursuant to Federal Rule of Appellate Procedure 43(a)(1) (“Uncontested Motion”) in the Appeal. On May 10, 2019, the Seventh Circuit granted the Uncontested Motion re-designating the Appeal as *Equal Employment Opportunity Commission, Plaintiff-Appellee, Estate of Steven L. Massie, Intervening Plaintiff-Appellee v. IDEC Corporation, Defendant-Appellant*, Case No. 19-1556.

5. Federal Rule of Civil Procedure 25(a) allows for the substitution of parties due to death. Pursuant to Federal Rule of Civil Procedure 25(a)(1)-Substitution if the Claim Is Not Extinguished (FRCP 25(a)(1)), if a party dies and the claim is not extinguished, the court may order substitution of the proper party.

6. Massie’s claims against IDEC are not extinguished by Massie’s death. See, for example, *Khan v. Grotnes Metalforming Sys. Inc.*, 679 F. Supp. 751, 756-57 (N. D. Ill. 1988) (ADEA and ERISA claims survive death); *Hall v. AT & T Corp.*, 2008 U.S. Dist. LEXIS 41078 at *3 (S.D. Ill. May 23, 2008) (“[r]emedial claims—those that seek compensation for past wrongs—are not extinguished by the death of the party.”); *Estate of Solinsky v. Custodial*

Maint., Inc., 2008 U.S. Dist. LEXIS 105964 (N.D. N. Y. December 30, 2008) (actions under ADA survive the death of a party.)

7. Pursuant to FRCP 25(a)(1), a motion for substitution may be made within 90 days after service of a statement noting the death. Counsel for Massie and counsel for Plaintiff Equal Employment Opportunity Commission (“EEOC”) were notified of Massie’s death on May 1, 2019. On May 6, 2019, counsel for IDEC informed the parties that IDEC was aware of Massie’s death. Attached hereto is Exhibit A, Notice of Intervenor-Plaintiff’s Death. This Motion is made within the timeframes of FRCP 25(a)(1).

8. Marla Massie, widow of Massie, is the personal representative and the Executor of the Estate of Massie.

9. The EEOC does not oppose this Motion.

WHEREFORE, Intervenor-Plaintiff Steven L. Massie respectfully requests that this Court grant Marla Massie’s Motion for Substitution of Intervenor-Plaintiffs Pursuant to Federal Rule of Civil Procedure 25(a) and substitute the Estate of Steven L. Massie for Steven L. Massie as Intervenor-Plaintiff in this action.

Respectfully submitted,

By: /s/Dianne M. Onichimowski

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